

1 ZACH COWAN, Acting City Attorney SBN 96372
2 SARAH REYNOSO, Acting Assistant City Attorney SBN 120277
SReynoso@ci.berkeley.ca.us
3 MARK J. ZEMBSCH, Deputy City Attorney SBN 127901
KRISTY van HERICK, Deputy City Attorney SBN 178685
2180 Milvia Street, Fourth Floor
4 Berkeley, CA 94704
TEL.: (510) 981-6950
5 FAX.: (510) 981-6960

6 Attorneys for Defendants
CITY OF BERKELEY; RICKY DAVIS;
7 ROGELIO MARQUINA and JOSEPH AYANKOYA

8 DAVID M. POORE SBN 192541
KAHN BROWN & POORE LLP
9 DPoore@kahnbrownlaw.com
110 Kentucky Street
10 Petaluma, CA 94952
TEL: (707) 763-7100
11 FAX: (707) 763-7180

12 Attorneys for Plaintiffs
JOHN SMITH and LIONEL BRAKINS, JR.
13

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

17 JOHN SMITH and LIONEL BRAKINS, JR.

18 NO. C08-04897 MHP

19 Plaintiffs,
vs.

20 **STIPULATION AND PROPOSED-
ORDER TO CONTINUE THE INITIAL
CASE MANAGEMENT CONFERENCE**

21 CITY OF BERKELEY, RICKY DAVIS;
ROGELIO MARQUINA; JOSEPH
ANACOYA,

22 Defendants.
23
24
25 DATE: February 2, 2009
26 TIME: 4:00 p.m.
27 CTRM: 15, 18th Floor
28 San Francisco

IT IS HEREBY STIPULATED by and between the parties to continue the presently scheduled Initial Case Management Conference date from February 2, 2009, to a new date and time that is convenient to the Court and the parties with the exception of February 13 through 20 as the attorneys have other conflicts during this period. The parties understand that

1 the following dates are available which work within the parties' respective calendars: February
 2 23, and March 2, 9, 16 and 23. The parties are willing to participate in a telephone conference
 3 with the Court, as necessary, to select new dates and times.

4 The parties are submitting this request in the above entitled case and all other related
 5 cases. There is good cause for the stipulation to extend time as follows:

- 6 • Unavailability of Lead Trial Counsel: The primary purpose of this request is the
 7 unavailability of lead trial counsel for the plaintiffs. In particular, plaintiffs' lead trial
 8 counsel, David M. Poore, has been scheduled for a significant discovery and status
 9 hearing in the nationwide class action entitled *Stalnaker v. Allstate Insurance Company*,
 10 *et. al.* Case No. 04 CV 2628 which is pending before the District Court, El Paso County,
 11 State of Colorado, located in Colorado Springs, Colorado. Given this conflict, it would
 12 be impossible for plaintiffs' lead trial counsel to attend both hearings as plaintiffs'
 13 counsel is required to travel to Colorado Springs. The parties stipulate and agree that
 14 this trial conflict constitutes good cause to continue this matter.
- 15 • No Prior Trial Continuance Requests: The parties have not made any prior requests for a
 16 continuance of the Initial Case Management Conference in this matter.
- 17 • Judicial Economy and No Prejudice: The parties are not making this request for any
 18 improper purpose, including undue delay. Instead, the parties agree that judicial
 19 economy will be served if this request is granted. In particular, it is crucial that
 20 plaintiffs' lead trial counsel attend and participate in the Initial Case Management
 21 Conference. Moreover, neither party would suffer any prejudice if the trial date was
 22 continued; instead, the parties have stipulated to this request.

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1 SO STIPULATED.
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Respectfully submitted:

4 ZACH COWAN, Acting City Attorney
5 SARAH REYNOSO, Acting Assistant City Attorney
6 MARK J. ZEMBSCH, Deputy City Attorney
7 KRISTY van HERICK, Deputy City Attorney
8

9 Dated: January 26, 2009.

10 By: _____ /s/ _____
11

12 MARK J. ZEMBSCH, Deputy City Attorney
13 Attorneys for City of Berkeley; Ricky Davis;
14 Rogelio Marquina and Joseph Ayankoya
15

16 Respectfully submitted:

17 KAHN BROWN & POORE LLP
18

19 Dated: January 26, 2009.

20 By: _____ /s/ _____
21

22 DAVID M. POORE
23 Attorney for Plaintiffs LaDaniel Key; Jimmy Smith;
24 Johnny Tolliver; Louis Jernigan; Melvin Ponder;
25 Eddie Percoats and Tay Woods
26

18 **ORDER**
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20 THE COURT HEREBY ORDERS AS FOLLOWS:

21 The parties' request to continue the Initial Case Management Conference is hereby
22 GRANTED. The presently set Case Management Conference on February 2, 2009, is hereby
23 VACATED. The parties are ordered to appear at an Initial Case Management Conference on
24 March 23, 2009, at 4:00 a.m./p.m. to set a trial date and new deadlines.
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IT IS SO ORDERED.

